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ØKOKRIM,

The Norwegian National Authority for Investigation and Prosecution of
Economic and Environmental Crime
C. J. Hambros plass 2C
0164 Oslo, Norway

REQUEST FOR INVESTIGATION AND PROSECUTION
- UNLAWFUL MANAGEMENT OF THE NOBEL PEACE PRIZE

Thanking you for the meeting on 26.3 2014 with Thomas Skjelbred, the Deputy director of ØKOKRIM, I am glad that the Norwegian National Authority for Investigation and Prosecution of Economic Crime will look into potential criminal aspects of the Norwegian management of "the prize for the champions of peace (fredsförfäktare)" established by Alfred Nobel.

We follow up with this letter of accusation. Those who bear particular responsibility for the misuse of the Nobel Prize are the Nobel Committee chair, Thorbjørn Jagland, and the committee secretary, Geir Lundestad. Their acts may be violations of the Penal Code § 255, jf. § 256 (grave embezzlement) and § 275, jf. § 276 (grave breach of trust). Enterprise liability based on § 48 a is also a possibility, considering subsection 2 that includes *foundations* in the concept *enterprise* in subsection 1.

GENERAL BACKGROUND FOR THE REQUEST

Prosecution is not an end in itself. But after six years of work, countless requests to the Norwegian Nobel Committee, the Swedish Nobel Foundation, the Norwegian and Swedish Foundation Authorities to have the prize awarded to winners that meet the requirements of the Nobel testament, we see no other solution.

The historical backdrop in this case is that Swedish inventor and industrialist Alfred Nobel in his later years took a keen interest in the cause of peace. He created the "prize for the champions of peace" to provide financial support for the efforts to abolish the military in all countries, and replacing power with law in international politics. Over the years, the Nobel Committee has forgotten the testament and the prize has been awarded more and more frequently to other people and organizations than the intended beneficiaries. This is illegal and

punishable.

The prehistory of this request is the following: The demand that the Nobel Committee must examine its mandate and the purpose of the prize was first put forward in an article in *Aftenposten* on August 14, 2007, see **Attachment 1**. A legal analysis of the purpose was presented in the spring of 2008, in letters both to the Nobel Committee and the Parliament, by the then President (later the Nobel chair) Thorbjørn Jagland. I have since researched and substantiated the demand for a change of the selection policy and a full replacement of the committee members in the book *Nobel's will* (Vidarforlaget, 2008). The Nobel Prizes have been awarded since 1901, but this book is the first known legal assessment of the award's purpose. It was followed up with a greatly expanded book in English, *The Nobel Peace Prize. What Nobel Really Wanted* (Praeger, 2010) which was later published in several translations, Chinese, Finnish, Spanish, and Swedish: *Nobels fredspris. Visionen som försvann*, (Leopard, 2011 – The Nobel Peace Prize. The vision that disappeared). In addition, I have published a large number of newspaper and journal articles.

All attempts to have an honest and genuine debate about the prize and the mandate have failed. During six years, the Committee has not once related to 1) the legal significance of the testator's intention, or 2) what kind of peace work Nobel wished the prize to support, and 3) the term "champions of peace (fredsförfäktare)." Neither Parliament nor the Nobel Committee has shown any interest in what Nobel intended. This made it necessary to try also complaints to the public agencies for the monitoring of foundations.

The Norwegian Foundations Authority considers the case to belong under Swedish authorities, the seat of a foundation is where its money is being managed. Based on my requests the Swedish Foundations Authority (The *Länsstyrelsen* (the County Administrative Board of Stockholm)) opened an investigation in January 2012. This case was concluded on March 21, 2012, with the Authority expecting that a number of measures would be implemented to ensure compliance with the testator's description of purpose. The Authority assumed that the Nobel Foundation in its response had given satisfactory assurances of being aware of its ultimate and superior responsibility for ensuring that all prizes are awarded in accordance with the purpose stipulated in the will of Nobel and thereby in conformity with the law. By these promises to the County Board the Nobel Foundation obtained a dismissal of the case from further investigation. However, once the investigation had been shelved, the Swedish Nobel Foundation applied to a different authority, the Kammarkollegiet, to be exempted from its obligation to supervise the decisions of the Norwegian Committee. The case has yet to be decided, but the Foundations Authority in a submission to the Kammarkollegiet has advised sharply against exempting the Nobel Foundation from its full responsibility for the peace prize.

Many will undoubtedly have reservations to raising questions with political

implications with the police. They should be resolved through the ordinary course of public debate. I fully agree. But for democracy and the rule of law to function some preconditions are indispensable. In this case, the Nobel Committee has refused to take any account of the Nobel testament as a limitation of its freedom of action. Solicitations that they award the prize in accordance with the will – even orders from a public authority that they do so – have had no effect. Freedom of speech becomes of no value when those entrusted with societal power do not heed protests based on solid documentation of criminal conduct and abuse of power.

Perhaps the most serious in this matter is that the subjects of this complaint seem to feel free to push ahead confident that society's law enforcement agencies will not enforce the laws against them. The case therefore raises fundamental questions of democracy. Politicians are elected on a mandate and must, like everyone else, abide by the laws. This is elementary and should, of course, not least be clear to Jagland. In the Nobel case he violates the very values of democracy and rule of law that he is tasked with promoting in his high office in the Council of Europe. His attitude to obeying the law and to public debate must not become the common norm; if it should we would no longer have neither democracy nor rule of law.

As evidence in the case I filed, in the meeting with ØKOKRIM, my Swedish book on the Nobel Peace Prize and a four-page resume of salient points. Both in that resume (dated March 26, 2014) and in the following references to pages are - unless otherwise stated - to my Swedish book on the Nobel prize. To the extent desirable I will be pleased to assist ØKOKRIM with further references or documentation.

LEGAL BASIS

The law is not a problem in this case. According to the Inheritance Act § 65, what the testator "meant" - his subjective will – is to be implemented. What Nobel actually "meant" is a question of evidence. The political ideas and concepts of the period are the key to a correct understanding of Nobel's purpose. Studying the evidence I discovered a concept that Nobel had used in the testament, but nobody had noticed. Nobel used the expression "the prize for the champions of peace" about the recipients, and this is the simplest and safest intake to the testator's intention. Clear evidence of how Nobel understood the concept "champions of peace" are found in his correspondence with Bertha von Suttner.

Nobel had reacted with strong enthusiasm to the Suttner bestseller *Lay down your arms* (1889), he joined her Austrian society of the friends of peace as a member, supported her work financially and promised her to "do something great" for the movement (60-61). The prehistory of the will is well summarized in the book Kenne Fant wrote on Alfred Nobel (see p. 51-52, p. 229-232 in my

book (even if Fant probably is wrong when he says that Nobel immediately wrote to Suttner once he had signed the will (p. 232)).

By the will Nobel made a clear choice of side in the battle between two diametrically opposed views on the possibility of an agreement between all countries in full disarmament. The two views are described as follows in a contemporary report from the peace conference in The Hague in 1899:

In the debate on ending armaments two world views were clearly exposed: Those who believed in the road of trust and cooperation were opposing those praising the old belief that nothing other than weapons can solve international conflicts. This latter category did their best to sabotage the deliberations.

(quoted from Heffermehl "*The Nobel Peace Prize, What Nobel Really Wanted*," p. 21).

Ragnvald Moe, secretary of the Nobel Committee (1910 to 1946) wrote in his work in French on *The Nobel prize and the peace movement* (Aschehoug, 1932) that the language in the final will was chosen to cover more fully the various aspects of the work of the peace movement of the 1890s (p. 99).

This clear evidence makes it superfluous to discuss the three terms "fraternity / disarmament / peace congresses" in Nobel's will. Much wrong and confusing has been said about them, but it is sufficient to note that they square well with the evidence of whom Nobel envisioned as the "champions of peace," namely Suttner and her friends of peace. This is also how it was perceived by contemporaries, including the Swedish King Oscar II who complained that "[Nobel] had come under the influence of visionaries and in particular women [sic]" (p. 35) and by leading Norwegian politicians in 1901 and the next few years. For example by foreign minister Jørgen Løvland in 1904 (p. 116) and in 1910, as recalled in 2010 by the Minister of Knowledge Tora Aasland (p. 276-7). Further, in 1901 and 1906 respectively, by the Presidents of Parliament Carl Berner and Gunnar Knudsen (pp. 86-87).

Nobel left to the Parliament of Norway the appointment of five members of the award committee because our Parliament at the time of Nobel was a leader in promoting the peace program Nobel wished to support. There still are people supporting the idea of creating a disarmed "fraternity of nations" (p. 265-267), and they are more important than ever. But today the Parliament holds the opposite view. There is bipartisan consensus in Parliament on an increase of the military budget from year to year. The testament is the same, but the majority in Norwegian politics has abandoned the Nobel approach, and misuses his funds to freely promote their own ideas, a unison belief in and commitment to military strength and power games as the way to an enduring peace. This abuse of the Nobel money has become possible by cultivating the concept of a general "Peace Prize" and the idea that they are free to design its content, completely

disconnected from Nobel 's intentions and the rules of law on how wills must be read (what Nobel "meant"). References to evidence of this being their practice (quoted from my book in English) are found in my letter November 11, 2010, to the Swedish Foundations Authority, **Attachment 2**.

A good and very revealing description of the Committee's practice was given by the Nobel committee secretary Geir Lundestad in an article published at the Nobel Foundation's website in 2001. In Lundestad's view, the prize would not have been such a success

had it not been for the decent, even highly respectable, record the Norwegian Nobel committee has established in its selections over these 100 years. One important element of this record has been the committee's broad definition of peace, enough to take in virtually any relevant field of peace work.

. . . although the Norwegian Nobel committee never formally defined "peace," in practice it came to interpret the term ever more broadly. [Emphasis added.]
(original text is in English, quoted from Heffermehl "The Nobel Peace Prize, What Nobel Really Wanted," p. 77).

Lundestad here provides an accurate, entirely correct description of the committee's thinking. In plain language, he writes that the committee interprets the term "peace" more and more broadly, i.e. it decides on the basis of a term that does not come from the will. Particularly remarkable is the fact that Lundestad envisions the possibility of having "formally defined" the term "peace." The thought that Nobel's own description and intention might be of any importance does not occur to him at all. Such a practice is not even close to being called an interpretation, it completely ignores Nobel and his will. Nobel's purpose obviously bears no weight.

Had the task been to award a general "peace prize" it would have been acceptable to adapt the content over time, to shifting ideas. The specific idea of the Nobel prize is a choice of route, to create peace through disarmament, the opposite of peace through armament. This idea does not change over time, but the committee's use of the concept "Peace Prize" has continued unaffected by all requests to the Nobel Committee to study the testament and implement the intention of Nobel. The committee leader Thorbjørn Jagland again and again, even though he should know better, has used terms like "peace / cause of peace / peace work" and formulations of the type: ".... who has done most for the cause of peace in 2009?" (Nobel speech for Barack Obama).

Furthermore, the Nobel Committee has not shown any respect for the detailed orders in the aforementioned decision of March 21, 2012, of the Swedish Foundations Authority. In its submission to the Authority the Norwegian Nobel

Committee had claimed that it was autonomous and independent and not to take instructions from anyone. The Authority pointed out that his was a false view, the Norwegian committee is subordinate to the board of the Nobel Foundation in Stockholm.

DISCRETION TO PROSECUTE AND ØKOKRIM'S PRIORITIES

During six years working with the Nobel testament, I have become more and more concerned with what the practice and selections tell us about a decline in democratic culture and respect for the rule of law. When the Norwegian book, *Nobel 's will* (2008), had no effect it was followed up with a second book in English (2010), supplemented by a part II which is using the responses to my criticism of the Nobel Prize as a case study of power and politics. My conclusion is clear: the attitudes Jagland and Lundestad have toward the law, power, and the legal rights of political opponents is problematic. Democracy and the rule of law depends on an honest, fact-based and truth-seeking debate to function.

The first reaction of Jagland, in a letter to me June 24, 2008, was that the Parliament had not passed any act on the Nobel prize and therefore could not be in breach of law (p. 144). Jagland has never changed this bizarre attitude, in actual practice he has, both in selections of winners and public debates a.o. with me, acted as if the laws are without any interest as a frame that political activity must be kept within. My orientation of July 10, 2008, to Jagland, then president of Parliament, on the applicable legislation and the idea that Nobel wished to support follows as **Attachment 3**. The core of the problem with the Jagland and Lundestad management of the Nobel prize was formulated already in a short article in *Dagbladet* on October 28, 2008, where Gunnar Garbo, a former Member of Parliament for the Liberal Party and a Norwegian ambassador, wrote on the book "*Nobel 's will*" (2008):

"A conspicuous silence surrounds the accusation that Fredrik Heffermehl has directed to Parliament and the Nobel Institute in his recent book "*Nobel's will*." What Heffermehl documents, is something that not only the awarders, but most of us have overlooked: that those who manage Nobel's will are not entitled to interpret the purpose of the award in their own best judgment. They are bound by law and justice to select the winners that best correspond to what the testator meant.

...

Fredrik Heffermehl accuses the Norwegian awarders of breaking the laws. They can keep silent, but they cannot silence him away. A serious accusation requires a response. *Either they must prove that his legal and ethical arguments do not hold. Or they have to admit that he is right and change their practice accordingly.* This is a moral challenge not only to the committee, but to the Norwegian Storting as well." (two phrases put in italics here).

Central to the democratic rule of law is the framework of law that politics and politicians are bound to operate within. If a political majority violates the law and neither the political nor the administrative control mechanisms do work, the institutions established to enforce the law are the last barrier to ensure people the protection of the law. Such considerations are strong grounds of principle for ØKOKRIM to accommodate the request for an investigation to be opened.

The democratic rule of law is a method of non-violent conflict resolution, based on, inter alia, that everyone must obey the law. The obligation to comply with the law should not at least be clear to the legislators, they are not themselves above the law. This is elementary. But this is precisely how Thorbjørn Jagland has acted in this matter. Since June 2008 he has consistently behaved as if he has full confidence that the laws will not be enforced against the Nobel Committee.

In a similar way Geir Lundestad obviously expects that so few will react that the committee does not have to consider the will of Nobel, but is free to define his own "Peace Prize." When the Swedish Foundations Authority emphasized that the will has to be followed and that the supreme and final responsibility rests with the Nobel Foundation in Stockholm the Norwegian Committee must have realized that it has a problem. The purpose of having an application submitted to Kammarkollegiet was, according to Lundestad in a statement to me in June 2013, to ensure that the Norwegian committee should be completely free from all constraints - also from Nobel and his will. The statements of Lundestad on the historical aspects of the purpose of the peace prize appear odd coming from a professor of history.

The unwillingness to show any interest in Nobel's purpose and to consider evidence and arguments regarding Nobel's purpose has lasted for more than six years. The determination to break the law has thus been firm and enduring and it is hard to believe that the two have acted in good faith.

Finally; Those entrusted with social power cannot be permitted to operate without respect for democracy and the rule of law. Ignoring dissent and mowing down dissidents is a dangerous path to embark on. If we allow such norms to become political standard, how much democracy do we then have?

Respectfully,

Fredrik S. Heffermehl

Attachment 1: Article, Aftenposten August 14, 2007, *Peace prize in danger*.

Attachment 2: Survey sent to Länsstyrelsen November 11, 2010, on actual practice.

Attachment 3: Letter July 10, 2008, FSH to President of Parliament Jagland.

We support and give our backing to the request for investigation and prosecution:

Anna-Lisa Björneberg, Sweden, chair of Fredsam (Gothenburg),

Nils Christie, Norway, professor, University of Oslo

Erik Dammann, Norway, founder “Future in our hands,” Oslo

Thomas Hylland Eriksen, Norway, professor, University of Oslo

Ståle Eskeland, Norway, professor of criminal law, University of Oslo

Erni Friholt, Sweden, Peace movement of Orust

Ola Friholt, Sweden, Peace movement of Orust

Gunnar Garbo, Norway, ex MP, leader of *Venstre*, the Liberal Party

Lars-Gunnar Liljestrand, Sweden, Chair of the Association of FiB lawyers

Tomas Magnusson, Sweden, ex President, International Peace Bureau

Birger Schlaug, Sweden, author, ex MP

Sören Sommelius, Sweden, author and culture journalist

Maj-Britt Theorin, Sweden, ex President, International Peace Bureau

Gunnar Westberg, Sweden, Professor, ex Co-President IPPNW (Nobel peace prize 1985)

Jan Öberg, TFF, Sweden, Transnational Foundation for Peace and Future Research.